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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/943,344	08/30/2001	Daryl Carvis Cromer	RPS9 2001 0047	8681

7590 03/24/2006

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EXAMINER

BEKERMANN, MICHAEL

ART UNIT PAPER NUMBER

3622

DATE MAILED: 03/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	09/943,344		CROMER ET AL.	
	<b>Examiner</b>		<b>Art Unit</b>	
	Michael Bekerman		3622	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 8/30/2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |  |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>8/30/2001</u> . | 6) <input type="checkbox"/> Other: ____  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. **Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

Regarding claim 1, the claim recites the limitation "promising profit" in lines 12-14. It is unclear as to what profit would be considered promising.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. **Claims 1, 4, 14, and 16 are rejected under 35 U.S.C. 102(e) as being anticipated by Cunningham (U.S. Patent No. 6,029,139).** Cunningham teaches a system and method for optimizing promotions that includes all of the limitations recited in the above claims.

**Regarding claims 1 and 14**, Cunningham teaches the storing of entries for products including identification information and data relating to profit from sales (Column 2, Lines 65-67 and Column 3, Lines 1-3), the generating of a score for each product (sales profit), the comparing of that score to other products (a comparison takes place between competitors) (Column 12, Lines 37-41), and the selection of products that should be promoted (Column 5, Lines 37-38). There is also a three-tier client/server architecture, which is taken to communicate over a switched telephone network.

**Regarding claims 4 and 16**, Cunningham teaches storing sales and level of sales (profit) and generating a score based on multiplying profit by sales volume (Column 5, Lines 59-67 and Column 6, Lines 20-21). The constant updating of sales data is taken to be inherent in the system.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. **Claims 2, 3, 8-13, 15, 20-24, and 28-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cunningham (U.S. Patent No. 6,029,139) in view of Blinn (U.S. Patent No. 5,999,914).**

**Regarding claims 2, 3, 8-10, 15, 20, 21, and 28-30**, Cunningham doesn't teach locations of advertising information. Blinn teaches an electronic promotion system that shows an advertisement for a promoted product on a web page (Column 1, Lines 50-66). An advertisement for the product is assigned to a special location on a webpage during a checkout procedure (Column 3, Lines 2-7). It would have been obvious to one having ordinary skill in the art at the time the invention was made to automatically input the findings of Cunningham into the system of Blinn. This would save users time that would be spent inputting the promotional plan themselves. With multiple advertisements for multiple products, an advertisement database is inherent. The number of promotions chosen inherently can't exceed the number of available advertising spaces.

**Regarding claims 11, 12, 22, 23, 31 and 32**, Cunningham doesn't specify the highest level of scores as being selected. Blinn teaches the scoring and comparing of promotions to rank them in order from highest to lowest (Column 2, Lines 12-14). It would have been obvious to one having ordinary skill in the art at the time the invention was made to rank the promotions of Cunningham in order of the most likely to succeed. This would ensure that a higher profit is garnered.

**Regarding claims 13, 24, and 33**, Cunningham teaches segmenting products into different segments for further analysis (Column 6, Lines 22-30 and Column 7, Lines 16-20). Cunningham also teaches comparing competitors (in the same category) (Column 12, Lines 37-41).

4. **Claims 5-7 and 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cunningham (U.S. Patent No. 6,029,139).**

**Regarding claims 5 and 17**, Cunningham teaches to take inventory into consideration (reducing out-of-stock) when planning promotional programs (Column 5, Lines 45-49). Cunningham doesn't specify the multiplication on inventory by the profit margin of a product. It would have been obvious to one having ordinary skill in the art at the time the invention was made to take inventory into account by multiplying inventory by the profit margin. This would allow for higher inventory items to be promoted and possibly sold faster. The constant updating of inventory data is taken to be inherent in the system.

**Regarding claims 6, 7, 18, and 19**, Cunningham doesn't specify how often the system updates the system. It would have been obvious to one having ordinary skill in the art at the time the invention was made to update the system as close to real time as possible. Otherwise, the optimization data would be inaccurate and there would be no point in using the system of Cunningham.

### ***Conclusion***

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The following references are cited to further show the state of the art with respect to promotion optimization:

U.S. Patent No. 6,889,203 to Levine

U.S. Patent No. 6,553,352 to Delurgio


U.S. Pub No. 2001/0014868 to Herz

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Bekerman whose telephone number is (571) 272-3256. The examiner can normally be reached on Monday - Friday, 7:30 - 4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric W. Stamber can be reached on (571) 272-6724. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MB

  
JEFFREY D. CARLSON  
PRIMARY EXAMINER